**UTUSAN MELAYU (MALAYSIA) BHD & ORS**

**v.**

**TJANTING HANDICRAFT SDN BHD & ANOR**

COURT OF APPEAL, PUTRAJAYA
MOKHTAR SIDIN JCA
ARIFIN ZAKARIA JCA
NIK HASHIM JCA
[CIVIL APPEAL NO: W-02-228-01]
30 NOVEMBER 2004

***TORT:*** *Defamation - Publication of article in magazine - Whether article was defamatory - Whether fair comment and justification inapplicable - Whether malice proved - Whether award of RM1.3 million excessive - Whether award on aggravated damages proper - Whether separate awards under head of innuendo for slander of goods and libel warranted*

The respondents supplied shirts and baju kurung from batik silk materials manufactured by the 1st respondent to APEC leaders who attended the APEC meeting. The appellants published an article ('the article') in the Malay language with a photograph of the APEC leaders and comments as to the quality of the respondents' batik in a magazine called 'Wanita'. The respondents alleged that the article was defamatory of them and brought an action against them. In their defence, the appellants relied upon justification and fair comment. The trial judge found in favour of the respondents and awarded damages in the sum of RM1.3 million to the respondents. Hence, this appeal by the appellants on liability and quantum. The respondents cross-appealed for separate award of damages for slander of goods and libel under the head of innuendo on the ground that the trial judge had found a case of innuendo.

**Held (dismissing the appeal on liability but allowing appeal on quantum; dismissing cross-appeal)**
**Per Nik Hashim JCA delivering the judgment of the court:**

**[1]** The batik silk materials worn by the APEC leaders were not on display by the respondents. They were not meant to invite criticism. Also, there was no evidence to show that the 3rd appellant who was the author of the article was a qualified art critic. (p 79 c-d)

**[2]** The words used in the article far exceeded the bounds of fair comment and just criticism. They were clearly intended to disparage the respondents in the world of batik fashion. They were so extreme that no fair-minded person would have honestly used them. Further, the words in the opening paragraph had nothing to do with the quality of the batik silk materials but were purposely imported into the article to excite adverse opinions of others against the respondents' batik silk materials. (p 79 e-h)

**[3]** It was no defence to show that the appellants did not intend to defame the respondents if reasonable people thought the language was defamatory of the respondents. There was recklessness in the publication of the article with total disregard as to whether the statements made were true or false. Therefore, there was malicious intent on the part of the appellants against the respondents as found by the trial judge. (p 80 c-f)

**[4]** The trial judge correctly construed and assessed the Malay text of the article meticulously and gave it a natural and ordinary meaning a reasonable man on the street would give and found the words complained of defamatory of the respondents. (p 80 f-g)

**[5]** There was evidence to support the finding by the trial judge that the 2nd respondent was the alter ego of the 1st respondent. The article was a grave slander of the 1st respondent's goods and libel upon the 2nd respondent. As a consequence thereof, the 1st respondent was gravely injured in its manufacturing and trading character and the 2nd respondent was seriously injured in her personal business reputation and goodwill. She surely suffered untold distress and embarrassment as a result of the article. The trial judge's finding on liability was therefore affirmed. (p 81 a-e)

**[6]** The trial judge failed to address his mind properly when he held that the article complained of was published in the newspapers. This was because newspapers have a wider audience compared to that of the Wanita magazine. The trial judge did not attach weight and significance to this element. Therefore, this was a misdirection on the part of the trial judge that warranted interference. Further, the trial judge misapprehended the facts and was influenced by the prevailing trend then in awarding the damages. However, the finding of fact that the appellants were motivated by actual malice in publishing the article warranted the making of the award on aggravated damages. Having regard to the principles of law established by the authorities and the relevant circumstances of the case,

the quantum of damages awarded by the trial judge in the amount of RM1.3 million was grossly excessive and should be reduced to RM250,000. (pp 82 f-h & 83 a-g)

**[7]** The trial judge was correct in refusing to make separate awards under the head of innuendo for slander of goods and libel. At the trial, the respondents had not applied to amend to include separate causes of action for innuendo. Since the respondents had not pleaded specifically for damages for innuendo, the claim for such damages could not be entertained. Therefore, the cross-appeal was dismissed. (p 84 a-b)

*[**Bahasa Malaysia** Translation Of Headnotes*

Responden-responden telah membekalkan baju dan baju kurung batik sutera yang diperbuat oleh responden pertama kepada ketua-ketua negara APEC yang menghadiri mesyuarat kumpulan tersebut. Perayu-perayu menyiarkan suatu artikel dalam Bahasa Malaysia ('artikel') dengan sekeping gambar pemimpin-pemimpin APEC tersebut dan komentar mengenai kualiti batik sutera yang dibekalkan oleh responden-responden di dalam sebuah majalah yang dipanggil 'Wanita'. Responden-responden mengatakan bahawa artikel adalah berbau fitnah dan kerana itu telah memulakan tindakan terhadap perayu-perayu. Dalam pembelaan mereka, perayu-perayu memplid justifikasi dan komen yang wajar. Hakim bicara membuat keputusan yang berpihak kepada responden-responden dan dengan itu membenarkan gantirugi sebanyak RM 1.3 juta kepada mereka. Perayu-perayu merayu terhadap liabiliti dan kuantum. Responden-responden merayu balas dan memohon award gantirugi berasingan bagi slander barangan dan libel berasaskan innuendo atas alasan bahawa suatu kes innuendo telah wujud sepertimana yang diputuskan oleh hakim bicara.

**Diputuskan (menolak rayuan atas liabiliti tetapi membenarkan rayuan terhadap kuantum; menolak rayuan balas)**
**Oleh Nik Hashim HMR menyampaikan penghakiman mahkamah:**

**[1]** Baju-baju batik sutera yang dipakai oleh pemimpin-pemimpin APEC tidak dipamerkan oleh responden. Kerana itu ia bukanlah bertujuan untuk menarik kritikan. Juga, tiada keterangan yang menunjukkan bahawa perayu ketiga yang menulis artikel adalah seorang pengkritik seni yang layak.

**[2]** Perkataan-perkataan yang digunakan dalam artikel jauh melampaui had komen wajar dan kritikan adil. Perkataan-perkataan tersebut jelas bertujuan untuk menjatuhkan nama baik responden di persada dunia perusahaan batik. Selain itu, perkataan-perkataan di perenggan pertama artikel tiada

kena mengena dengan kualiti baju batik sutera tetapi sengaja ditulis begitu bagi mendorong pandangan buruk orang lain terhadap pakaian batik sutera responden.

**[3]** Membuktikan bahawa perayu-perayu tidak berniat untuk memfitnah responden bukanlah satu pembelaan jika orang-orang yang munasabah berfikir bahawa bahasa yang digunakan sememangnya telah memfitnah responden. Terdapat kesemberonoan dalam penyiaran artikel tanpa mempeduli sama ada apa yang disiarkan itu benar ataupun palsu. Oleh yang demikian, terdapat niat jahat di pihak perayu-perayu terhadap responden-responden sepertimana yang didapati oleh hakim bicara.

**[4]** Hakim bicara telah mentafsir dan menilai dengan betulnya teks Melayu artikel dan telah berbuat demikian secara keseluruhan dan berhati-hati sebelum mendapati bahawa perkataan-perkataan yang digunakan itu telah sebenarnya memfitnah responden-responden.

**[5]** Terdapat keterangan bagi menyokong dapatan hakim bicara bahawa responden kedua adalah alter ego responden pertama. Artikel adalah suatu slander yang teruk terhadap barangan responden pertama dan suatu libel terhadap responden kedua. Akibatnya, perniagaan dan perusahaan responden pertama telah rosak dengan teruknya, sementara responden kedua pula mengalami kerosakan pada nama baik dan reputasi niaganya. Beliau semestinya telah mengalami malu dan tekanan yang tidak dapat digambarkan dengan kata-kata akibat dari artikel. Dapatan hakim bicara berkaitan liabiliti dengan itu adalah disahkan.

**[6]** Hakim bicara gagal membuat pertimbangan yang sewajarnya apabila mendapati bahawa artikel yang dibantahi itu disiarkan di dalam surat khabar. Ini kerana surat khabar mempunyai asas pembaca yang lebih luas berbanding dengan majalah Wanita. Hakim bicara tidak memberi tekanan kepada faktor ini. Ianya dengan itu adalah suatu salah arahan oleh hakim bicara sekaligus membolehkannya ianya diganggu. Selain itu, hakim bicara telah tersalah faham akan fakta-fakta dan telah dipengaruhi oleh trend semasa ketika mengaward gantirugi. Apapun, dapatan fakta bahawa perayu-perayu didorong oleh niat jahat sebenar dalam menyiarkan artikel menjustifikasikan pemberian gantirugi teruk. Mengambilkira prinsip undang-undang dan halkeadaan kes, kuantum gantirugi yang diawardkan oleh yang arif hakim berjumlah RM1.3 juta adalah terlalu tinggi dan harus dikurangkan kepada RM250,000.

**[7]** Hakim bicara betul apabila enggan memberi gantirugi berasingan di bawah tajuk innuendo bagi slander barangan dan libel. Di perbicaraan, responden-responden tidak membuat permohonan untuk meminda bagi memasukkan kausa tindakan berasingan bagi innuendo. Oleh kerana responden-responden tidak memplid permohonan untuk gantirugi bagi innuendo secara spesifik, tuntutan bagi gantirugi berkenaan tidak boleh dilayan. Rayuan balas, dengan itu, adalah ditolak.]

**Case(s) referred to:**
*Charleston v. News Group Newspapers Ltd [1995] 2 AC 65* ***(refd)***
*E Hulton & Co v. Jones [1910] AC 20* ***(refd)***
*Fisher v. Clement 10 B & C 472* ***(refd)***
*Karpal Singh Ram Singh v. DP Vijandran [2001] 3 CLJ 871 CA* ***(foll)***
*Mc Quire v. Western Morning News [1903] 2 KB 100* ***(refd)***
*Tjanting Handicraft Sdn Bhd & Anor v. Utusan Melayu (M) Bhd & Ors [2001] 3 CLJ 571 HC* ***(refd)***

**Legislation referred to:**
Defamation Act 1957, ss. 8, 9

*For the appellants - Mohd Ariff Yusof (M Reza Hassan); M/s Cheang & Ariff*
*For the respondents - Shamsul Bahrain Ibrahim; M/s Skrine & Co*

*Reported by Usha Thiagarajah*

## JUDGMENT

**Nik Hashim JCA:**

### Background

This appeal arises from the judgment of the High Court at Kuala Lumpur (see [2001] 3 CLJ 571) ordering the appellants to pay to:

(i) the 1st respondent the sum of RM300,000 as general damages for slander of goods;

(ii) the 2nd respondent the sum of RM700,000 as general damages for libel; and

(iii) the 2nd respondent the sum of RM300,000 as aggravated damages;

and interest thereon at the rate of 4% per annum from the date of publication to the date of the judgment. Cost was also awarded to the respondents.

The 1st appellant was the publisher of the daily newspaper and of a monthly magazine called Wanita. The 2nd appellant was the editor of the said magazine. The 3rd appellant was employed by the 1st appellant as its journalist and the author of the article complained of. The 4th appellant was the printer of the said magazine.

The 1st respondent carried on the business of manufacturing batik materials under the trade name of Tjanting and the 2nd respondent was and is its managing director and its alter ego.

In 1998, under a contract, the respondents were commissioned by the Ministry of International Trade and Industry (MITTI) to supply shirts and baju kurung made from batik materials manufactured by the 1st respondent to all 21 APEC leaders who attended that meeting. The leaders wore the shirts and baju kurung supplied by the respondents at a ceremony held at Cyberjaya. Photographs of the ceremony showing the leaders wearing those clothes supplied by the respondents were taken. In the February 1999 of Wanita, the appellants published an article in Bahasa Melayu of the photograph of the APEC leaders taken with comments as to the quality of the respondents' batik. The article written by the 3rd appellant reads:

> APEC
>
> Petang itu di samping bercakap mengenai Bomba seperti lain-lain tempat yang saya pergi, orang tidak lupa bercakap mengenai Amerika. Semua orang marahkan Al Gore, meluat dengan Malott tetapi saya geram dengan pakaian batik yang dipakai pemimpin Apec. Hodoh. Sampai hati mereka persembahkan kraf tangan kita yang indah dalam rupa yang buruk kepada tetamu negara. Walhal inilah masanya mencanang kecantikan barangan tulen kita.
>
> Setiap kali melihat gambar mereka berbaju batik hati saya sakit. Siapalah yang mencipta batik baju itu? Daripada corak, paduan warna hingga kepada potongan, tidak halus, tidak harmoni, tidak eksklusif, potongan pula tidak terletak di badan, meleweh, melendut, ada gedoboh ada sendat. Ini tidak sepatutnya berlaku. Tolong jangan beri alasan tidak tahu ukuran mereka.
>
> Soal mutu inilah yang sering dirungutkan oleh pengguna. Bukan kerana tiada upaya tetapi lebih kepada tahap kawalan mutu. Seperti kata seorang rakyat Singapura, untuk bandingkan barangan Malaysia, Singapura dengan barangan Jepun dan Australia, barangan mereka jauh bermutu tinggi meskipun dijual di pasar raya borong.
>
> Oleh itu jangan cepat berbangga apabila rakyat mulai membeli barangan tempatan. Kerana tanpa mutu peralihan ini hanya sebentar. Itulah sebabnya walau gawat jenama luar negara tetap menjadi igauan, cuma nafsu berbelanja dikurangkan. Dan kemungkinan itu kempen memulau barangan Amerika dan British kurang mendapat sambutan.

Seperti kata teman, tersentuh hati melihat rakyat Iraq, rasa-rasa nak ganyam Amerika dan British. Tetapi tadi pergi Lot 10, yang berkenan beg Liz Claiborne, jaket Donna Karan. Itu belum masuk lagi ke Next atau Laura Ashley. Habis macam mana nak pulaukan barang buatan dua negara ini? Walaupun hati nekad tidak mahu beli, kepala asyik terbayangkannya.

The certified English translation reads:

APEC

That evening, besides talking about Bomba, everywhere I went people were talking about America. They were all angry at Al Gore and nauseated by Malott but I was more disgusted with the batik clothes worn by the APEC leaders. Unsightly. It was unthinkable for them to present our beautiful handicraft in such an ugly fashion to the State guests when it should have been an opportune time to proclaim the beauty of our authentic goods.

Every time I looked at their photographs in batik shirts, I have this resentment. Who on earth created such batik shirts? From the design, combination of colours right up to the style, not refined, not in pleasing combination, not exclusive, the cutting was not made to rest on the body, carelessly done, sagging, some are big and loose and some are tight. This should not have happened. It does not lie in the mouth to say that the measurements were not known.

Quality has always been the main complaint by consumers. It is not due to lack of ability but, rather lack of quality control. As one Singaporean said, in comparison with Malaysia and Singapore goods, Japanese and Australian goods are of far better quality even though they are sold in wholesale market overt.

So, don't be too hasty in taking pride when people start buying local goods. Because without quality, this change is only a short while. For this reason, in spite of economic upheaval, people are still raving mad over foreign brands, only the temptation to spend must be reduced and the possibility is that the campaigns to boycott American and British goods have little response.

As said by a colleague, it was very touching to see the Iraqis, one was tempted to ganyam (sic) the Americans and the British. But just now I went to Lot 10 and found to my taste Liz Claiborne bags, Donna Karan jackets, what more had entered Next or Laura Ashley. So how are we to boycott goods from the two countries? Even though the heart is determined not to buy, they are always on the mind.

At the trial the respondents contended that those words in the article in their natural and ordinary meaning meant and were understood to mean that the respondents produced unsightly batik and the 2nd respondent had brought shame to the country by allowing the world leaders to wear unsightly and ugly shirts and baju kurung made from those batik materials. Further, the article implied that the contract to manufacture and supply the clothings to be worn by APEC leaders should not have been given to the respondents as they did not have the capability of producing quality handicraft befitting the country's reputation. The 1st respondent pleaded that by reason of the said words and in consequence thereof it had been gravely injured in its manufacturing and trading character. The 2nd respondent pleaded that she had been seriously injured in her personal business reputation and good will and had suffered considerable distress and embarrassment. In their defence the appellants denied that the words complained of referred to or were understood to refer to the respondents or to any one of them. They also denied that the words bore or were capable of bearing any of the meanings alleged by the respondents. They also denied any allegation of malice on their part. There was also reliance on justification and fair comment on ss. 8 and 9 of the Defamation Act 1957 respectively.

The learned trial judge found in favour of the respondents and made the orders stated above. Hence this appeal by the appellants. However, the respondents being dissatisfied with the award, cross appealed against the decision for not awarding damages for separate causes of action in respect of each of the respondents for innuendoes in slander of goods claimed by the 1st respondent and in libel claimed by the 2nd respondent.

**Appeal**

Before us learned counsel for the appellants submitted essentially on four grounds:

(i) batik, being a work of art, once displayed to the general public, may thenceforth be commented and/or criticized upon by any member of the public and therefore the article, read in the light of the various positive articles concerning the respondents during and after the publication of the article, was an honest comment not actuated by malicious intent on the part of the appellants against the respondents;

(ii) in determining whether the said article was defamatory or not, consideration should be given to the original Bahasa Melayu version in its entirety rather than to its English translation;

(iii) the finding that the 2nd respondent was the alter ego of the 1st respondent was erroneous;

(iv) the damages awarded was excessive influenced by the prevailing trend then in awarding the damages.

It is noted that the appellants did not rely on justification as a ground in this appeal.

**Work Of Art**

We agree with the respondents that the photograph as published in the Wanita was used by the 3rd appellant to mount an attack on them was not taken on occasion of a display of batik silk materials before the public because in coming to the conclusion that the batik design is a work of art, the learned judge was not placing reliance upon the fact that the batik silk materials worn by the APEC leaders was a work of art in visual representation. What was worn by the leaders as appeared in the photograph was presented by MITTI and it was not put on display by the respondents. In the premises it was not meant by MITTI to invite criticism. Moreover, there is no evidence to show that the 3rd appellant was a qualified art critic.

**Fair Comment**

On the subject of fair comment, we agree with the learned trial judge that the words complained of far exceeded the bound of fair comment and just criticism. The usage of the words such as 'Hodoh', 'rupa yang buruk', 'sakit hati melihat', 'siapalah yang mencipta baju batik itu?', 'corak tidak halus', 'paduan warna tidak harmoni, tidak eksklusif', 'potongan pula tidak terletak di badan, meleweh, melendut, gedoboh, sendat', 'tidak bermutu', 'barang yang dijual di pasaraya borong lebih bermutu' are certainly words that tend to disparage the respondents in the world of batik fashion. The language used was so extreme that no fair-minded person, however obstinate and prejudiced his views were, would have honestly used them (*Mc Quire v. Western Morning News* [1903] 2 KB 100). The words complained of were not in fact the genuine expression of the appellants' views. It is obvious from the title 'APEC' and the opening paragraph that the appellants had used the heat of public anger at Al Gore and Malott to libel and slander the respondents. Although the title and the public outrage towards Al Gore were totally divorced from the contents of the article and the atmosphere at the declaration ceremony of the APEC leaders at Cyberjaya had nothing to do with the quality of the batik silk, it was purposely imported into the article just to excite adverse opinions of others against the respondents' batik.

**Malicious Intent**

It is the appellants' contention that the existence of various positive articles concerning the respondents published by the appellants before, during and after the publication of the article shows that there was no malicious intent whatsoever on the part of the appellants against the respondents.

On the question of malicious intent, the law looks at the tendency and consequences of the publication and if the defendant has published words which have in fact injured the plaintiff's reputation, the defendant must be taken to have intended the consequences naturally resulting from his act (*Fisher v. Clement* 10 B & C 472). It is no defence to show that the defendant did not intent to defame the plaintiff, if reasonable people would think the language to be defamatory of the plaintiff (*E. Hulton & Co v. Jones* [1910] AC 20.

In the present case, the learned judge was right when he held that at the time the 3rd appellant wrote the article complained of she knew it to be untrue. The photograph of the leaders wearing the batik shows even to a lay person that the charges levied against the respondents by the appellants have not been borne out. The material and pattern of the batik shirts and baju kurung were approved by MITTI. Thus, by labelling the batik materials as 'hodoh' and 'rupa yang buruk' (ugly and unsightly), the appellants were not really criticizing the batik worn by the leaders, but in actual fact were writing with an indirect and dishonest intention to injure the respondents. It is clear that the appellants used the public anger at Al-Gore and Malott to mount their libellous attack on the respondents. As there was recklessness in the publication with total disregard as to whether the statement was true or false, then it was proper for the trial court to hold malicious intent on the part of the appellants against the respondents.

**Whether The Judge Had Considered The Article In Its Entirety**

On the appellants' complaint that the learned judge had placed great weight on the English translation of the article in deciding whether the article was defamatory, we find the complaint devoid of any merit. We agree with the learned judge that the translation was a literal one translated from Bahasa Melayu into English by a certified court interpreter. We think it is a correct translation. The learned judge understood Bahasa Melayu and in his analysis in determining whether the words complained of are denigratory of the respondents, the learned judge even reproduced the offending words in Bahasa Melayu to support his finding (see at p. 599 G to H of the law report). We are satisfied that the learned judge had correctly construed and assessed the Malay text of the article in its entirety meticulously and given the natural and ordinary meaning that a reasonable man on the street would have of the said article and consequently found that the words complained of are defamatory of the respondents.

**Alter Ego**

On the issue of the 2nd respondent being found as the alter ego of the 1st respondent, we are in complete agreement with the learned judge as there are evidence to support the finding. The learned judge at p. 601 C to F said:

> I accept from the evidence adduced that the second plaintiff was the alter ego of the first plaintiff. In fact, without the second plaintiff's royal heritage, her managing directorship, her own interest and training that she had brought into the company, the first plaintiff would have been nothing more than another company among the multitude of companies dealing with batik silk. The exclusiveness of the first plaintiff's Tjanting was brought about due to the personality of the second plaintiff … The agreed and admitted documents in the common agreed bundle of documents were rhetoric with adulation over her batik designs … the first plaintiff is a nonentity without the second plaintiff …

Thus, considering the evidence as a whole and particularly from the contents of the articles complained of and the defences put forward, we are in agreement with the learned judge that the article under the heading 'APEC' is a grave slander of the 1st respondent's goods and libel upon the 2nd respondent. By reasons of the said words and in consequence thereof the 1st respondent had been gravely injured in its manufacturing and trading character and the 2nd respondent had been seriously injured in her personal business reputation and goodwill. Surely, she had suffered untold distress and embarrassment as a result of the article.

For the above reasons we affirm the finding of the learned judge with regard to liability.

**Damages**

We now come to the question of damages. Learned counsel for the respondents argued that the damages were never pleaded as a ground of appeal. We rejected the argument on the basis that paras. 12 and 15 of the memorandum of appeal sufficiently covered the question of damages for our consideration. Before us, it was contended by the appellants that the award was excessive on the ground that the learned judged was greatly influenced by the prevailing trend then in awarding mega damages in relation to defamation suits.

We agree with the appellants' contention. In an appeal against an award of damages in a defamation suit, Abdul Hamid Mohamad JCA (now FCJ) in *Karpal Singh a/l Ram Singh v. DP Vijandran* [2001] 3 CLJ 871 at p. 903 stated the applicable principle:

> The principle that this court should apply is clear: Whether this court is of the view that the trial judge had 'acted on a wrong principle of law, or has misapprehended the facts, or has for these or other reasons made a wholly erroneous estimate of the damage suffered'. (see *Ling Wah Press (M) Sdn Bhd & Ors v. Tan Sri Dato' Vincent Tan Chee Yioun & Other Appeals* and the cases referred to therein).

Whereas on the quantum of damages, His Lordship at p. 902 observed:

> Until the arrival of Vincent Tan in 1995, the highest award ever given by the court in this country was RM100,000. Vincent Tan sky rocketed the awards. When the award was confirmed by the Court of Appeal, what was an isolated pinnacle in an otherwise undulating plain, the trend is set. When the Federal Court confirmed it, it became a binding precedent in all the courts in this country. But, now the Court of Appeal in *Liew Yew Tiam* has had second thoughts about it. The learned judge of the Court of Appeal who wrote the main judgment in *MGG Pillai* has sought to distinguish *MGG Pillai*'s case. 'It is a decision that has been much misunderstood and the trend should be checked,' he said.

It is worthy of note that the award of RM1.3M in the present case was also examined by His Lordship in the above case.

In *Charleston v. News Group Newspapers Ltd* [1995] 2 AC 65 HL, Lord Bridge of Harwish at p. 70 said:

> It is often a debatable question which the jury must resolve whether the antidote is effective to neutralize the bane and in determining this question the jury may certainly consider the **mode of publication** and the relative prominence given to different parts of it. (emphasis added)

In his judgment, the learned trial judge held that the article complained of was published in the newspapers instead of Wanita magazine, which is a monthly periodical when at p. 589 he said:

> I am satisfied that since the defendants had published in the newspapers and read by the general public, words containing an untrue imputation against the reputation of the plaintiffs, the defendants have indeed defamed the Plaintiffs.

Therefore, we agree with the appellants' submission that the learned judge had failed to properly address his mind when he held that the article complained of was published in the newspapers. This is because newspapers have a wider audience compared to that of Wanita magazine, a monthly periodical which largely caters for the women readers. The confusion on the part of the learned judge is amplified further when in other parts of his judgment, he had rightly held that the article complained of had appeared in the Wanita magazine.

Further, the learned judge recognized that Wanita magazine had restricted publication and coverage when he said at p. 598:

> The magazine Wanita is not a sentional daily tabloid; it is a monthly periodical magazine and is read generally by women from all strata of life.

And yet, he did not attach to that element the weight and significance it deserved. This, in our judgment, amounts to misdirection on the part of the learned judge that warrants interference by this court.

Thus, applying the principles in *Karpal Singh* to this case, this court is of the view that the learned trial judge had misapprehended the facts and was also influenced by the prevailing trend then in awarding the damages.

With regard to the award of aggravated damages, we agree with the learned judge that there is indeed a case for the award. The finding of fact that the appellants were motivated by actual malice in publishing the article complained of warrants the making of an award of aggravated damages. However, the amount of aggravated damages must be a reasonable one. In our judgment, a reasonable amount should not be as much as the mother award.

Thus, having regard to the principles of law established by the authorities and to the relevant circumstances of this case, we are of the view that the quantum of damages awarded by the learned trial judge is grossly excessive. In our view, the following awards are more reasonable:

(i) to the 1st respondent, the sum of RM100,000 as general damages for slander of goods;

(ii) to the 2nd respondent, the sum of RM100,000 as general damages for libel

(iii) to the 2nd respondent, the sum of RM50,000 as aggravated damages.

The total award made against the appellants would be RM250,000.

Accordingly, the appeal on liability is dismissed and the appeal on quantum is allowed to the extent that the award of RM1.3M as damages is now reduced to RM250,000. As the appellants fail in the appeal against liability but succeed partly on the quantum, we award half costs to the appellants.

## Cross Appeal

There is one further matter that must be addressed. It is the respondents' cross appeal. The respondents complained that the learned judge, after having found a case for innuendo, ought to have considered separate awards under the head of innuendo for slander of goods and libel. To our mind, the learned judge is correct in refusing to make the awards. At the trial, the respondents had not applied to amend to include separate causes of action for innuendo. And since in this case the respondents had not pleaded specifically for damages for innuendo, the claim for such damages in our view, cannot be entertained. We therefore, dismiss the cross appeal with costs.